

Judge: Thomas T. Glover
Chapter: 13
Hearing Date: March 10, 2010
Hearing Time: 9:30 a.m.
Hearing Location:
Marysville Municipal Court
1015 State Ave. Courtroom 1
Marysville, WA 98270
Response Date: March 03, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE
IN CHAPTER 13 PROCEEDING
NO. 09-23427-TTG

In re:

TIMOTHY B BENDOKAS and
HEIDI BENDOKAS,
Debtor(s).

OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS CASE

K. Michael Fitzgerald, Chapter 13 Trustee, objects to the confirmation of the debtors' Chapter 13 plan and moves to dismiss the debtors' Chapter 13 case. In support of his Objection and Motion, the Trustee states as follows:

The debtors filed this case on December 21, 2009. The debtors' Chapter 13 plan, also filed December 21, 2009, proposes semi-monthly plan payments of \$2,025.00. The debtors have made their first plan payment.

The debtors' Schedule A (Real Property) lists a condominium at 54613 Tanglewood, La Quinta, California valued at \$306,000.00 with a \$281,000.00 mortgage lien. The debtors' plan also lists pre- and post-petition homeowners' association dues and real estate taxes, although neither of those entities is listed in the debtors' schedules. The debtors need to amend their schedules to add those creditors and they need to serve the plan on those creditors.

The Trustee also objects to debtors' retention of this condominium. The debtors are proposing to pay \$2,786.00 monthly in ongoing payments to the mortgage, homeowners association and property taxes, and to cure \$9,500.00 in pre-petition arrears to those entities (these figures are based on the debtors' plan). These expenses are not reasonably necessary to be expended for their maintenance and support under 11 U.S.C. § 1325(b). Moreover, the debtors' Schedule I (Current Income) reflects that they do not receive rental income from the property. In

OBJECTION TO CONFIRMATION
AND MOTION TO DISMISS - 1

Chapter 13 Trustee
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1 short, there is no equity in the condominium and there is no reason for the debtors to retain and
2 pay for this property at the expense of their unsecured creditors. The debtors should file a
3 *feasible* amended plan that provides for surrender of the condominium.

4 The debtors' Schedule J (Current Expenditures) reflects negative monthly net income of
5 \$1,334.00. Only an individual with regular income may be a debtor under Chapter 13. 11
6 U.S.C. § 109(e). An individual with regular income means an individual whose income is
7 sufficiently stable and regular to enable that individual to make payments under a Chapter 13
8 plan. 11 U.S.C. § 101(30). Based on their own schedules, the debtors do not have sufficient
9 income to fund the plan. If the debtors surrender the condominium, they may have the income to
10 present a feasible plan.

11 In addition, the debtors need to address the secured claim filed by Hertz Equipment
12 Rental; provide proof of the \$1,000.00 business income listed on Schedule I; provide proof of
13 their business license and insurance (and, if applicable, the bond) for both businesses, Bendokas
14 Painting Co. and Bendokas Associates; provide current profit and loss statements for both
15 businesses; and address the preferential payment listed in paragraph 3 of the Statement of
16 Financial Affairs. Lastly, the debtors need to delete paragraphs 2 – 7 of Section XII of the plan,
17 as those provisions are duplicative of provisions now included in Local Bankruptcy Form 13-4.

18 In the event debtors' plan payments become delinquent after the date this objection and
19 motion are filed, the Chapter 13 Trustee also objects to confirmation and moves to dismiss this
20 case based on debtors' plan payment delinquency.

21 The Trustee reserves the right to assert additional bases for his Objection and Motion. A
22 proposed Order on this Objection and Motion is attached and incorporated.

23 WHEREFORE, the Chapter 13 Trustee requests that the Court enter an Order denying
24 confirmation of the debtors' Chapter 13 plan and dismissing the debtors' Chapter 13 case.

25 Dated this 2nd day of February, 2010

26
27 /s/ Jason Wilson-Aguilar, WSBA #33582 for
28 K. MICHAEL FITZGERALD
Chapter 13 Trustee